

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON

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APR 30 1940

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Federal Security Administrator,
Federal Security Agency.

Copy

Sir:

I have your letter of March 12, 1940, as follows:

"Your decision is respectfully requested as to whether or not the dual compensation act of May 10, 1916 (39 Stat. 120), as amended by act of August 29, 1916 (39 Stat. 582), is for application in the case of Dr. Charles S. Johnson, who is at present in the employ of the Department of Labor and of the Federal Security Agency.

"Dr. Johnson was appointed on December 29, 1939, a Senior Educationist, P-5, in the U. S. Office of Education, with headquarters at Nashville, Tennessee, at a salary of \$2,300 per annum for half-time service, based on the rate of \$4,600 per annum for fulltime. This appointment is limited to the Study of Higher Education for Negroes authorized by the Act of May 10, 1939 (53 Stat. 685), under the provisions of which act he was appointed. He entered on duty on January 2, 1940.

"It now develops that Dr. Johnson also has been made a member of the Railroad Carrier Industry Committee of the Wage and Hour Division of the Department of Labor, under authority of the Fair Labor Standards Act of 1938 (52 Stat. 1060). The Department of Labor advises that Dr. Johnson is being paid \$15.00 per diem, when actually employed, and that he receives also \$5.00 per diem in lieu of subsistence, plus traveling expenses. He is on call by the Chairman of the Committee or by the Administrator of the Wage and Hour Division. He will probably serve until the Committee is discharged. The first meeting began February 12 in Washington and is still in progress.

"Your attention is called to Section 5(b) of the Fair Labor Standards Act, supra, under which the members of the Railroad Carrier Industry Committee are appointed, which section contains this provision:

"An industry committee shall be appointed by the Administrator without regard to any other provisions of law regarding the appointment and compensation of employees of the United States."

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"Does that provision exempt members of the Industry Committee from the provisions of the dual-compensation statutes?"

"In 15 Comp. Gen. 751, in connection with the consideration of the question of dual compensation, it was stated that 'if either or both of the employments is on a per-annum basis, the dual-compensation statute is applicable,' and in 16 Comp. Gen. 909, it was stated that that decision 'is not to be regarded as holding that the said act of 1916 precludes a person employed in a part-time position on an annual basis from receiving compensation fixed by contract or agreement on a fee basis under a separate and distinct employment.' However, it is not clear whether Dr. Johnson's employment in the Wage and Hour Division of the Department of Labor falls within the latter category."

Section 6 of the act of May 10, 1916, 39 Stat. 120, as amended by the act of August 29, 1916, 39 Stat. 582, provides in pertinent part:

"That unless otherwise specially authorized by law, no money appropriated by this or any other Act shall be available for payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of \$2,000 per annum * * *"

The term "salary" as used in this statute includes per diem compensation such as that received by Dr. Johnson as a member of the Railroad Carrier Industry Committee. See decision of April 6, 1939, 18 Comp. Gen. 768. Accordingly, the rule stated in 16 Comp. Gen. 909, cited in your letter, is not applicable in this case. This does not necessarily mean, however, that his appointment as a member of said committee while employed in the United States Office of Education on a part-time basis at a salary of \$2,300 per annum constituted a violation of the above-quoted dual compensation act, for section 5(b) of the act of June 25, 1938, 52 Stat. 1062, provides that members of an industry committee shall be appointed

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"without regard to any other provisions of law regarding the appointment and compensation of employees of the United States," and it seems clear that the dual compensation act of May 10, 1916, as amended, is a law "regarding the * * * compensation of employees of the United States." Hence, unless it can be made to appear that section 5(b), when considered in the light of the other provisions of the same statute and other statutes in para materia, was intended by the Congress to be understood or construed in a narrow and restricted sense and as not including a dual compensation statute such as the one here involved, the conclusion is required that Dr. Johnson's appointment as a member of the Railroad Carrier Industry Committee properly could be made without regard to said dual compensation act.

Section 5(b) is not the only provision of the act of June 25, 1938, supra, relating to the employment of personnel. It is provided in section 4(b) thereof that:

"The Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary to carry out his functions and duties under this Act and shall fix their compensation in accordance with the Classification Act of 1923, as amended * * *"

If the Congress had intended by the terms of section 5(b) merely to remove the restrictions thus imposed by section 4(b) so as to permit the appointment of members of an industry committee without regard to civil-service laws and the Classification Act of 1923, it is reasonable to presume that language would have been

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employed similar to that used in comparable provisions of other statutes. For instance, it is provided in section 501(c) of the act of June 26, 1936, 49 Stat. 1964, that:

"The Federal Alcohol Administration is authorized, without regard to the civil-service laws, to appoint such attorneys and experts, and, subject to the civil-service laws, to appoint such other officers and employees, as it deems necessary to carry out its powers and duties; * * *" (Underlining supplied.)

See, also, the act of January 22, 1936, 49 Stat. 1098, and section 4(a) of the act of September 1, 1937, 50 Stat. 889. Numerous other similar provisions may be found in the statutes.

Instead of employing such restricted language in section 5(b) of the statute here under consideration there was adopted the broad and inclusive provision that the appointment of members of an industry committee shall be made "without regard to any other provisions of law regarding the appointment and compensation of employees of the United States." (Underlining supplied.) In view of this fact and of the unusual character of the service for which the appointments referred to were to be made, the conclusion appears warranted that there was no intention that the language used should be understood or construed in a narrow and limited sense.

Accordingly, I have to advise that the language of section 5(b) of the act of June 25, 1938, supra, is sufficiently broad and comprehensive to include dual compensation statutes and that the employment of Dr. Johnson as a member of the Railroad Carrier Industry Committee without regard to the provisions of the act of May 10, 1916, as amended, was authorized.

Respectfully,

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